U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33359506

Date: OCT. 30, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a marketing analyst, seeks classification as an individual of extraordinary ability. Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3). The Director also entered a finding of willful misrepresentation of a material fact against the Petitioner. The Director denied a subsequent motion to reopen and reconsider, determining that the Petitioner did not meet the filing requirements to either reopen or reconsider the decision. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand this matter for the entry of a new decision consistent with the following analysis.

I. LAW

An individual is eligible for the extraordinary ability classification if they have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation; they seek to enter the United States to continue work in the area of extraordinary ability; and their entry into the United States will substantially benefit prospectively the United States. Section 203(b)(1)(A) of the Act.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner may demonstrate international recognition of a beneficiary's achievements in the field through a one-time achievement

(that is, a major, internationally recognized award). Absent such an achievement, a petitioner must provide sufficient qualifying documentation demonstrating that a beneficiary meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). A finding of willful misrepresentation of a material fact requires the following elements: the individual procured or sought to procure a benefit under U.S. immigration laws; the individual made a false representation; the false representation was willfully made and material to the benefit sought; and the false representation was made to a U.S. government official. *See generally* 8 USCIS Policy Manual J.2(B), https://www.uscis.gov/policymanual; *see also Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975). A finding of willful misrepresentation in a visa petition may be considered in any future proceeding to determine that a noncitizen is inadmissible to the United States. Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

II. ANALYSIS

The Petitioner is the founder and general manager of a marketing consultancy company in China, where he claims to have developed the theory of "value chain marketing" and to have published two books in the field of marketing.

In denying the petition, the Director determined that the Petitioner met one of the criteria he claimed to have satisfied: performance in a leading or critical role for organizations or establishments having a distinguished reputation. *See* 8 C.F.R. § 204.5(h)(3)(viii). However, the Director concluded the Petitioner did not submit evidence sufficient to establish that he met the following criteria at 8 C.F.R. § 204.5(h)(3): (iii), published material about the Petitioner; (iv), judging the work of others in the Petitioner's field; (v), original contributions of major significance to the field; or (vi), authorship of scholarly articles in the field. The Director further concluded, without explanation, that the Petitioner had willfully misrepresented himself to procure a U.S. immigration benefit.

In a motion to reopen and reconsider, the Petitioner stated that he met the claimed criteria, asserting the Director did not consider all of the submitted evidence and that novel requirements were imposed in the Director's decision. The Petitioner also submitted new evidence in support of his eligibility and pointed to the fact that he was not afforded an opportunity to rebut the Director's conclusion that he had misrepresented himself. On appeal, the Petitioner reiterates that the Director did not identify what factors led to the finding of misrepresentation, adding that the Director also did not provide analysis of his arguments on motion.

Upon review, we agree with the Petitioner's assertion that the Director's decision dismissing the motion to reopen and reconsider lacked a detailed analysis of the evidence submitted and did not fully explain the reasons for the unfavorable conclusions. The Director's decision does not fully analyze

the evidence submitted on motion, nor does it address the Petitioner's assertions regarding the misrepresentation finding. An officer must fully explain the reasons for denying a visa petition in order to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(1)(i); see also *Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). Accordingly, we find that the Petitioner was not adequately informed of the Director's reasons for determining that none of the material submitted in support of the four criteria satisfy the regulatory requirements at 8 C.F.R. § 204.5(h)(3)(iii), (iv), (v), or (vi). We also agree with the Petitioner's assertion that he was not properly afforded an opportunity to rebut the Director's conclusion that he had misrepresented himself. *See* 8 C.F.R. §103.2(b)(16)(i).

We note that the Director's decision denying the petition similarly lacked a detailed analysis of the evidence submitted and did not fully explain the reasons for the unfavorable conclusions. We also note that, in denying the petition, the Director made general references to fraud and misrepresentation but did not discuss or identify any specific evidence or provide any explanation regarding the determination that the Petitioner misrepresented himself or was otherwise engaged in fraud.

Accordingly, we will remand the matter to the Director for further consideration and issuance of a new decision.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.